

1. Following a Superior Court jury trial, Defendant was convicted of Possession with Intent to Distribute Heroin, Distribution of Heroin within 300 Feet of a Park, Resisting Arrest, and Possession of Heroin within 1000 Feet of a School. Defendant was sentenced to a total of 10 years imprisonment, suspended after five years for one year at Level III probation. Defendant did not file a direct appeal with the Delaware Supreme Court. Defendant's subsequent motion for modification of sentence was denied by the Superior Court. The denial was affirmed by the Supreme Court.

2. On January 14, 2009, defendant filed a non-conforming Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61. Defendant filed another Motion for Postconviction Relief on July 10, 2009.

3. This Motion for Postconviction Relief was referred to a Superior Court Commissioner pursuant to 10 *Del. C.* §512(b) and Superior Court Criminal Rule 62 for proposed findings of fact and conclusions of law. The Commissioner issued the Report and Recommendation on August 19, 2009. The Report sets forth the procedural history, defendant's asserted grounds for Rule 61 relief, and analysis of the relevant facts and law. The Commissioner recommended that defendant's motion for postconviction relief be denied.

4. On August 28, 2009, defendant filed an “Appeal to State’s Response to His Motion for Post-Conviction Relief.” Defendant argues that his “motion for post conviction relief cannot be procedurally barred if the defendant can either show cause that there has been some form of constitutional violation of his constitutional rights or that he is challenging the court’s subject matter jurisdiction of his conviction.” Defendant provides no specific support for this summary and general assertion.

5. The Court finds defendant’s argument to be wholly without merit. The underlying substantive and procedural arguments were considered and addressed in the Commissioner’s Report..

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THEREFORE, defendant’s objections to the Commissioner’s Report and Recommendation, entitled “Appeal to State’s Response to His Motion for Post-Conviction Relief,” are hereby DENIED. The Court, having reviewed *de novo* the Commissioner’s Report and Recommendation pursuant to Superior Court Criminal Rule 62, hereby ACCEPTS THE REPORT AND RECOMMENDATION IN ITS ENTIRETY. DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF IS HEREBY DENIED.

IT IS SO ORDERED.

The Honorable Mary M. Johnston